UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
	)	CAUSE NO.: 1:13-cr-00150-WTL-TAB
v.	)	
	)	
GUOQING CAO,	)	-01
SHUYU LI,	)	-02
	)	
Defendants.	)	

GOVERNMENT'S OBJECTION TO DEFENDANT CAO'S THIRD MOTION FOR MODIFICATION OF PRETRIAL RELEASE CONDITIONS

The United States of America, by counsel, Josh J. Minkler, Acting United States Attorney for the Southern District of Indiana, and Cynthia J. Ridgeway, Assistant United States Attorney, respectfully objects to defendant Cao's third request to modify the conditions of release filed November 6, 2014. In support thereof, the government would show the following:

I. RELEVANT CASE CHRONOLOGY

On November 8, 2013, the Court revoked the pretrial release order of the Honorable Magistrate Judge Mark Dinsmore, Southern District of Indiana (Dkt. 87) and *released* defendants Guoqing Cao ("Cao") and Shuyu Li ("Li") to the Volunteers of America ("VOA"). On April 23, 2014, the Court granted the defendants' request, altering the terms of release to home detention with standard conditions of pretrial release, among other restrictions including a prohibition on internet access. (Dkt. 158) Now, defendant Cao moves for a third time to modify his conditions of release citing personal compliance and future employment as the bases for his motion.

II. DISCUSSION

A. Defendant Cao's Supposition Is Misplaced

Defendant Cao suggests the Court authored conditions of release impose too great a burden considering the continuation of trial. (Dkt. 158) He simultaneously blames the government and the victim company for: (1) delay in discovery production, without appearing to take any responsibility for the several month delay in fashioning the terms of the Interim Protective Order; (2) delay in producing certain archived defendant lilly.com e-mails, without appearing to take responsibility for making the initial request for the material;[1] and (3) delay in producing Rule 17 material, without taking full responsibility for the largely overbroad nature of the Rule 17 subpoena and the lengthy litigation that ensued. This hallmark of blame shifting is further evidenced by defendant Cao's analogy to unnamed former Lilly employees. In essence, defendant Cao suggests the danger to the community and the victim company present were he to abscond to the country where he was living and working at the time of his arrest is analogous to possible danger suffered by the community and the victim company simply because unnamed former Lilly employees are also privy to confidential Lilly Property. *See* Dkt. 184. Here, defendant Cao misses the mark.

Defendant Cao suggests his continued adherence to the rule of law and this Court's Orders sustain his third request for modification of the Court's authored terms of release. Defendant Cao's supposition is flawed and his appeal to emotion misplaced.

The investigative facts of the case have not changed, nor has the impact on the victim company or American innovation lessened. Defendant Cao is alleged to have used the internet

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11 Defendant Cao's original request was for all of his archived lilly.com e-mails. The government agreed to accommodate this request back to 2009 with the Court's permission.

to misappropriate valuable, proprietary Lilly Property including business plans and scientific information, among other things. The Second Superseding Indictment sets forth in greater detail the execution of a sophisticated and protracted plan to apply for Chinese governmentally funded grant monies to assist the research and development efforts of Company A piggybacked on the sweat of Lilly R&D without seeking Lilly permission or authorization. Also set forth in greater detail are a few of the Lilly files defendant Cao downloaded surreptitiously approximately five-months after accepting employment with Company A—files that contain data infinitely more valuable to Lilly than the $55 million originally alleged.

1. This Court's Limited Restrictions are Reasonable and Appropriate

Here, defendant Cao was not residing in America, not working in America, had extended family overseas at the time of his arrest, and planned to move his nuclear family overseas in the near future. Defendant Cao alleges September 30, 2013 was the last day he enjoyed basic rights like a, ". . .walk with his wife around their Carmel neighborhood…." *See* Defendant's Memorandum In Support of Motion to Modify Conditions of Release, dkt. 191, p. 1. In fact, both defendants have been allowed privileges beyond regular attorney visits, religious services, and medical appointments to include non-essential trips with family members, regular walks to religious services, and at least one dinner celebration at a local eatery—liberties well beyond the government's understanding of the confines of home detention as ordered by this Honorable Court.

Defendant Cao suggests the Court authored release conditions are too oppressive, confining him unnecessarily to a single residence and precluding his ability to obtain future employment. However, while both defendants are permitted to seek court-approved employment now, neither have availed themselves of that opportunity. Instead, defendant Cao suggests his only alternative is access to the internet, a condition that would ease unfettered access to Company A and its employees were defendant Cao to be so inclined, and notwithstanding the fact that the internet is the instrumentality of defendant Cao's alleged crime.

2. The Danger of Harm to Eli Lilly Remains

Remarkably, defendant Cao also suggests the Lilly Property misappropriated is inconsequential based on the time that has elapsed and, therefore, the danger of harm to the victim company diminished. This statement cannot be reconciled with information Cao provided post-*Miranda* where, in describing some of the Lilly Property contained on the USB device defendant Cao admitted to possessing at his home or at his office at Company A (*emphasis added*), he alluded to taking the Lilly Property with the hope of putting it to future use. Moreover, the danger to Lilly is aggravated when combining the Lilly Property with the scientific knowledge possessed by Cao, particularly were Cao allowed internet access—the instrumentality of the crime as alleged.

B. Cao Relies Upon Misplaced Law

Defendant Cao's argument turns fatal when he relies upon misplaced law. *See* Dkt. 133, pp. 11-13. Cao is not detained. *United States v. Gallo*, 653 F. Supp. 320, 325-36 (E.D.N.Y. 1986), as relied upon by defendant Cao, demonstrates the court's disfavor with incarceration prior to trial for more than a year, not the court's consideration of halfway house placement or in the case of defendant Cao, with even less restrictive conditions of pretrial release.

III. CONCLUSION

This is a complex case and requires thoughtful Court intervention to reasonably assure the defendants' presence to face the charges and to uphold the rights of both the defendants and the victim company. The Court's careful reasoning at the time it released defendant Cao from custody to the VOA and from the VOA to home detention should not be disturbed.

WHEREFORE, for the foregoing reasons as well as those articulated by the Court in its previous ruling and as argued by counsel for the government at the previous detention hearings, the United States prays the Court deny defendant Cao's third motion to modify his conditions of release, and for all other just and proper relief.

Respectfully submitted,

JOSH J. MINKLER
Acting United States Attorney

By: */s/ Cynthia J. Ridgeway*
Cynthia J. Ridgeway
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the Defendants, by and through operation of the Court's e-filing system. The parties may access the filing by operation of the Court's electronic filing system.

/s/ Cynthia J. Ridgeway
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